

THE ORIGIN OF  
THE DISTINCTION OF RANKS

NATURAL LAW AND  
ENLIGHTENMENT CLASSICS

Knud Haakonssen

*General Editor*

NATURAL LAW AND  
ENLIGHTENMENT CLASSICS

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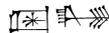
*The Origin of the  
Distinction of Ranks:  
Or, An Inquiry into the Circumstances  
Which Give Rise to Influence and Authority,  
in the Different Members of Society*

John Millar

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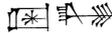
Edited and with an Introduction  
by Aaron Garrett  
*The Works and Correspondence of John Millar*

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## INTRODUCTION

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What is the nature of authority? How does it change and why? *The Origin of the Distinction of Ranks* is John Millar's<sup>1</sup> concise but trenchant answer to these questions via an empirical analysis of three so-called adventitious<sup>2</sup> personal rights and one adventitious "governmental right" of natural law theory: the right of husband over wife, father over children, master over servants, and chief or sovereign over tribesmen or citizens. These rights are of obvious interest for a social philosopher since all have a degree of authority built into them—the right of the father over the child, for example, presumes the father's authority to appropriately discharge his role and the duties incumbent to it. Yet, when these four rights are examined compar-

1. There is a growing secondary literature on Millar. In preparing this edition I have benefited particularly from, and drawn extensively on, Knud Haakonssen, *Natural Law and Moral Philosophy* (Cambridge: Cambridge University Press, 1996), chap. 5; William Lehmann, *John Millar of Glasgow 1735–1801: His Life and Thought and His Contributions to Sociological Analysis* (Cambridge: Cambridge University Press, 1960); John Cairns, "John Millar's Lectures on Scots Criminal Law," *Oxford Journal of Legal Studies* 8.3 (1988): 364–400; Michael Ignatieff, "John Millar and Individualism," in *Wealth and Virtue*, Istvan Hont and Michael Ignatieff, eds. (Cambridge: Cambridge University Press, 1983), 317–43; Duncan Forbes, "'Scientific Whiggism': Adam Smith and John Millar," *Cambridge Journal* 7 (1953–54): 643–70; Knud Haakonssen, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1985).

2. The distinction between natural and adventitious states, duties, and rights was common in natural law, adventitious rights being "those which arise or are made out of some human institution." See Francis Hutcheson, *Philosophia Moralis Institutio Compendiaria* (translated as *A Short Introduction to Moral Philosophy*), II.5.1. The *Institutio* was the textbook for Hutcheson's moral philosophy courses and was used also by Smith for his first course in 1751–52 when he filled in for the ailing Thomas Craigie (Ian S. Ross, *The Life of Adam Smith* [Oxford: Clarendon Press, 1995], 111–12). In his biography of Millar, John Craig notes that Millar attended these lectures; see pp. 8–9 below.

atively and historically, from Aragon to Zeeland, from ancient Rome to Georgian Glasgow, drastic differences appear in the authority appropriate to the exercise of the right. And this is not just a problem of comparing European and non-European societies. The Roman law, the backbone of much European legal and moral thinking, allowed the head of the household to treat wife, children, and servants as property and to expose infants.<sup>3</sup> The authority appropriate for the exercise of the right by early Romans (and Greeks) is completely at odds with the authority proper to a progressive eighteenth-century society. Millar's *Ranks* provides an empirical account of how rights arise and how they change, and a means to understand historical discrepancies in the scope of authority. It also attempts to draw some limited normative consequences and thus offer the elements of an empirical moral theory.

### The Argument of the *Ranks*

It is not surprising that the *Ranks* turns on rights, considering that the three most important influences on Millar's thinking all stressed that evolving systems of justice and rights were the backbone of morals and human nature. In *Treatise* III.2 David Hume argued that justice is an artificial human creation that guides and serves human utility. In his seminal essay, "The Rise and Progress of the Arts and Sciences," Hume discussed the history of the authority of husband over wife—the subject of the first long section of the *Ranks*—as an index of the progress of manners in society.<sup>4</sup> Adam Smith presented his historical theory of justice and rights in a series of lectures on moral philosophy that Millar attended in 1751. Student transcripts from Smith's lectures from the 1760s include extensive treatment of the rights Millar later considered in the *Ranks*, rooted in a stadial division between the ages of "Hunters," "Shepherds," "Agriculture," and "Com-

3. The question was debated in natural law theory (see p. 171 note). Hume discussed it in "A Dialogue" (David Hume, *Enquiries*, 3rd ed., ed. L. A. Selby-Bigge and P. H. Nidditch [Oxford: Clarendon Press, 1975], 324–28), Smith in *The Theory of Moral Sentiments* (V.2.15).

4. David Hume, *Essays Moral, Political, and Literary*, rev. ed., ed. Eugene V. Miller (Indianapolis: Liberty Fund, 1985), 131–34.

merce.”<sup>5</sup> Lord Kames treated the historical evolution of different aspects of the law, including criminal law and property law, in his *Historical Law-Tracts* (1758), connecting legal obligation, moral duty, and social progress.<sup>6</sup>

Justice, law, and rights were also central to Millar’s pedagogy. When the first edition of the *Ranks* appeared in 1771—*Observations Concerning the Distinction of Ranks in Society*—Millar had held the Regius Chair of Civil Law at the University of Glasgow for ten years. His primary teaching duty had been lecturing on Justinian’s *Institutes* and *Digest* with the aid of Heineccius’s commentaries.<sup>7</sup> The combination of Smith’s jurisprudence and variations in rights within the *Digest* itself—for example, changes in the Roman *peculium* (*Ranks*, <132–33>)—must have set Millar thinking about the history of adventitious rights. Furthermore, in addition to his regular course Millar undertook a series of “private” “Lectures on Government.” These lectures, which he continued for the rest of his life, were the source of his two major works: the *Ranks* and the *Historical View* (see appendix 3). Given the connection between the government lectures and the course on Roman law, it is unsurprising that the *Ranks*—the first part of the “Government” course—is infused with justice and rights.

The *Ranks*’s treatment of rights and their order was likely derived from Smith; likewise the division of human history into the four “ages” distinguished by population, wealth, the needs these engendered, and the ways those needs were satisfied.<sup>8</sup> Man’s earliest stages were characterized almost wholly by attempts to satisfy simple needs. As basic needs were satisfied more efficiently and population grew, wealth resulting from the satisfaction

5. Smith, *Lectures on Jurisprudence*, ed. R. L. Meek, D. D. Raphael, and P. G. Stein (Oxford: Oxford University Press, 1978), LJ (A), i.27. Following standard practice, Smith’s Lectures of 1762–63 are abbreviated “LJ (A),” and Smith’s Lectures of 1766 “LJ (B).”

6. “Moral duties, originally weak and feeble, acquire great strength by refinement of manners in polished societies.” Henry Home, Lord Kames, *Historical Law-Tracts* (Edinburgh: A. Kincaid and J. Bell, 1758), I:92.

7. Johann Gottlieb Heineccius (1681–1741) was a widely read and erudite natural lawyer. Millar used two works by Heineccius in structuring his civil law course: *Elementa juris civilis secundum ordinem Institutionem* (1725) and *Elementa juris civilis secundum ordinem Pandectarum* (1727).

8. Smith, *Lectures on Jurisprudence*, LJ (A), i.27, iv–v, 200–330. Kames also used a stadial scheme in the *Historical Law-Tracts* (I:28).

of needs allowed for leisure, the rise of human institutions, and more complex desires—the arts and sciences, taste, and love.

Romantic love provides a good illustration of how successive stages multiply needs. In the earliest stages of mankind commerce between the sexes was a ubiquitous function of animal need and so considered of little import in comparison with the acquisition of food (<28>). When men moved to the pastoral stage, food supplies became more regular and the labor in acquiring them less:

The leisure, tranquillity, and retirement of a pastoral life, seem calculated, in a peculiar manner, to favour the indulgence of those indolent gratifications . . . and mere animal pleasure is more frequently accompanied with a correspondence of inclination and sentiment. (<58>)

The transition to the pastoral stage also initiated the system of ranks,<sup>9</sup> as families acquired surplus wealth and power. When families separated due to growing estates and retinues, the resultant rivalries between different families seeking prominence in the order of ranks led to the suppression of sexual desires and “animal” commerce between the sexes. At the same time, increased leisure allowed young men and women to fixate more on desires that had been considered unimportant in the previous stage of society. Consequently, “the inclinations of individuals . . . will break forth with greater vigor, and rise at length to a higher pitch, in proportion to the difficulties which they have surmounted” (<61>). With this structural explanation (and much comparative empirical evidence) Millar showed how romantic love arose as a passion and became an important motive for action. For example, interfamilial contests over women gave rise to chivalric combat mediated by elites dispensing justice and thus avoiding feuds through a courtly system of ranks. These changes resulted in human beings with more complex social codes and more varied emotional lives that they needed to satisfy.<sup>10</sup>

For Millar, different historical stages were not just distinct but *progressive*:

9. “Ranks” means not just social or economic classes but any consistent, enduring ordering recognized and approved of by spectators.

10. Hume had stressed, as well, the rise of romantic love in connection with the progress of society (Hume, “Rise and Progress,” *Essays*, 131–34).

“There is . . . in human society, a natural progress from ignorance to knowledge, and from rude to civilized manners, the several stages of which are usually accompanied with peculiar laws and customs” (<4>). Each succeeding stage satisfies needs in a prior stage while developing new needs and the means to satisfy and express them through science (“knowledge”) and art (“civilized manners”). Stages were also progressive in another sense: our present stage of commerce has far less brutality than the first stage and less romantic extravagance than the later stages and thus allows women to be “more universally regarded upon account of their useful or agreeable talents” (<89>). Millar clearly viewed the unbigoted meritocracy and personal liberty appropriate to the fourth stage of society as desirable, and slavery and domestic tyranny as inappropriate to a progressive society insofar as it thwarted liberty and merit. In other words, unlike Rousseau and like Smith and Hume, Millar considered liberty and equality to be social achievements:<sup>11</sup>

Wherever men of inferior condition are enabled to live in affluence by their own industry, and, in procuring their livelihood, have little occasion to court the favour of their superiors, there we may expect that ideas of liberty will be universally diffused. This happy arrangement of things is naturally produced by commerce and manufactures; but it would be as vain to look for it in the uncultivated parts of the world, as to look for the independent spirit of an English waggoner among persons of low rank in the highlands of Scotland. (<241–42>)

This stress on progress was not an unbridled advocacy of wealth. Much like Smith, Millar viewed stagnant luxury as a dangerous corruptor of morals that stopped “useful and agreeable” talents from being recognized.<sup>12</sup>

11. This point was so important for Millar that he changed the neat rights-centered chapter structure of the first two editions of *Ranks* and added a separate chapter on the subject (chap. V).

12. “The excessive opulence of Rome, about the end of the Commonwealth, and after the establishment of the despotism, gave rise to a degree of debauchery of which we have no example in any other European nation” (<103>). It is notable that Millar’s main objection to debauchery in this context was that it restricts women to being viewed as sexual objects, a criticism possible only from an enlightened stage of commerce. Millar criticized “the voluptuousness of Eastern nations” (<102>) for reducing women to a state

Wealth is desirable only insofar as it gives rise to liberty and historical progress.

The scientist of human nature arrives at regularities that differentiate these stages through cross-cultural and comparative historical study. Millar's conclusions were tempered by the circumspect attitude toward evidence that he had learned from Hume.<sup>13</sup> In the later chapters of *Ranks* on government he made much use of Montesquieu's comparisons of legal codes and constitutions in *The Spirit of the Laws*. But Millar presumed, following Hume and *contra* Montesquieu, that mores or "moral causes," as opposed to physical causes such as climate, are responsible for characteristic differences in human population. Customs and mores arise from the aggregate actions of individuals. But individuals differ widely in their behavior, and the comparison of a few human individuals is not sufficient to educe general rules of human nature. By comparing many individuals, or different societies composed of many individuals, one can find consistent patterns of behavior. And by comparing regularities across historical periods the human scientist can discern stadial differences determined by underlying causes in human nature.

The stadial analysis had a further important function. It presupposed no particular contingent historical narrative such as "the Goths invaded," "Watt discovered the steam engine." Consequently, the "Age of Hunters" was not a particular time or place but rather a social arrangement built around a mode of subsistence that had existed, and perhaps would exist,

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of "slavery and confinement" as well. For parallel criticisms, see Adam Smith, *Theory of Moral Sentiments*, ed. D. D. Raphael and A. L. Macfie (Oxford: Clarendon, 1976), III.iii; and *An Inquiry into the Nature and Causes of the Wealth of Nations*, ed. R. H. Campbell, A. S. Skinner, and W. B. Todd (Oxford: Oxford University Press, 1976), II.iii. Millar's main objection seems to have been that "the chief effect of debauchery . . . has been to turn the attention, from the pursuits of business or ambition, to the amusements of gallantry" (<108>). Although Millar did not mention the impartial spectator, given Smith's influence it seems that the criticism of prior stages of society was made with reference to an impartial spectator who approves and recognizes useful and agreeable qualities in the Age of Commerce, and criticizes their neglect or destruction in prior stages.

13. See pp. 85–86 below.

in many times and places. Thus the divide between “ancients and moderns” that fascinated thinkers like Hume in the first half of the eighteenth century and continued to interest many thinkers who promoted comparative stadial history—such as Kames, Monboddo, and Gilbert Stuart—was moot. Instead, history has a scientifically accessible structure with identifiable moral causes.

This does not mean that stages necessarily follow one another like clockwork. Rome declined because of excess luxury and the accidental cause of the barbarian invasions (<218–19>). Accidents enter into the forms of particular governments as well. For example, Solon’s and Lycurgus’s idiosyncrasies were partially responsible for the very different manners of Athens and Sparta. But for laws to have influence with the people whom they are to govern, they must harmonize with and speak to existing regularities. The scientist of human nature should discover these empirical regularities yet not dismiss the role of accident (<7>).<sup>14</sup>

So far this is of a piece with Hume and Smith. But Millar’s *Ranks* goes beyond them in providing a stadial genealogy of particular rights and showing that rights should be understood as evolving responses to human needs. By focusing on familial rights Millar brought the problem of natural rights into sharp focus. If the most basic social rights are mutable and artificial, and if man is social, what is one to make of natural rights at all? Hume had pointed the way in his analyses of property in the *Treatise* and of the history of love by implying that all rights are to some degree adventitious, and natural rights of the Lockean sort are highly questionable. Millar’s contribution was to push this analysis in a single-minded way within a well-worked-out historical theory.<sup>15</sup>

A comparison with Smith’s discussion of the rights of husband over wife shows Millar’s novelty. Smith taught jurisprudence through the framework of his predecessor and teacher Francis Hutcheson, building the discussion of the first of the rights “which belong to a man as a member of a family” around three aspects of marriage: “1st, the manner in which this union is

14. Cf. Millar’s discussion of polygynous and matrifocal societies as a variant on the normal patriarchal structure of the first stage of society (<53–54>).

15. See Knud Haakonssen, *Natural Law and Moral Philosophy*, chap. 5.

entered into and the origin of it; 2dly, the obligation or rights that are thereby acquired and the injuries corresponding to these; and 3dly, the manner in which it is dissolved” (LJ (A), iii.2). Smith treated these rights historically, but the discussion was always structured by background issues in natural law: the standing of polygamy, the perpetuity of marriage, the reasons for dissolving a marriage. The primary purpose of Smith’s lectures was to elucidate marriage; the historical evolution of marital rights was auxiliary. Similarly, Smith’s very brief discussion of the right of father over children centered on the issue of greatest interest to natural lawyers: *patria potestas*.

Smith’s discussions of the rights of the master and, most notably, the rights of the community member or citizen involve much more extensive stadial comparison. He used comparisons between societal stages to make a normative claim, “that the state of slavery is a much more tolerable one in a poor and barbarous people than in a rich and polished one” (LJ (A), iii.105), and he developed a complex stadial history of governments as well (iii.105–v. 43), both of which influenced the *Ranks*. Unlike Smith, however, Millar treated each of the rights directly through the stadial theory and showed how changes in the scope of the right arose from changing needs. We have seen this with the right of husband over wife; Millar made parallel arguments for the other three rights under consideration. Furthermore, he attempted to draw normative consequences about authority itself. Slavery and brutality toward inferiors have no place in progressive societies because authority has legitimacy when it is used to efficiently satisfy needs. The authority appropriate to an adventitious right in a particular historical stage ought to be limited by the useful and agreeable ends that the rights allow human groups to fulfill. Once a right gets in the way of the satisfaction of these needs, for example, by stopping useful and agreeable talents of women from being recognized, it is no longer legitimate. With this insight Millar had created a fully empirical moral theory centered on adventitious rights and allowing for normative criticisms.

### John Craig’s “Account of the Life and Writings of the Author”

*Ranks* is an important work of empirical moral philosophy, and the fourth, posthumous edition is further enhanced by John Craig’s “Account of the

Life and Writings of the Author.”<sup>16</sup> Craig’s fascinating portrait details the intellectual milieu of Glasgow, the teaching of law at the university, the great regard in which Millar was held, and his rare personal qualities. John Craig (1766–1840) was Millar’s nephew, and he studied under him at Glasgow in the late 1770s, acquiring a firsthand acquaintance with his uncle’s teaching methods. He was, along with Millar’s son-in-law James Mylne, the literary executor of Millar’s estate. The two also made a posthumous edition of the *Historical View*, which added two volumes of manuscripts (1803). Craig, a notable political theorist himself, wrote two works: *Elements of Political Science* (1814), in which he drew out further consequences of Smith’s and Millar’s political philosophy, and *Remarks on Some Fundamental Doctrines in Political Economy* (1821). Consequently, Craig was in a unique position to understand Millar’s life, his influences, and his doctrines and should be the first stopping point for Millar’s readers.<sup>17</sup>

### Sources Used by Millar

Millar used a wide range of sources to make his stadial argument in the *Ranks*. I will briefly consider four of the types of sources on which he drew.

1. Because of the comparative historical nature of Millar’s project, travel narratives were important sources. He kept up with this expanding literature and added footnotes to the second and third editions as evidence became available from newly published reports. Many of the travel writers he drew on are now obscure, but by examining a few we can get a sense of the breadth of Millar’s reading.

Millar made extensive use of the Abbé Prevost’s enormous collection of travel reports, the *Histoire Générale*. Each volume of the *Histoire Générale* includes a number of different “books”; hence Millar’s citation procedure refers to the volume, the book within the volume, and normally a chapter within the book. He also made repeated use of another massive, popular work, the *Modern Universal History*, which collects ancient sources, histories, and travel narratives in its forty-plus volumes.

16. Millar has had important if scant admirers since his death, including James Mill, John Stuart Mill, and Werner Sombart. See Lehman, *John Millar of Glasgow*, chap. 14.

17. Thanks to Knud Haakonssen for supplying me with information on Craig.

One of the best-known travel reports Millar drew on was William Dampier's *New Voyage* (1697). Dampier is now primarily remembered for a 1703 expedition in which Alexander Selkirk found Dampier so unbearable as a captain that he asked to be marooned on Juan Fernández rather than stay onboard the ship. He lived on Juan Fernández until 1709 and became the model for Defoe's Robinson Crusoe. Another important seventeenth-century source was Jean Chardin's *Journal du voyage du Chevalier Chardin en Perse et aux Indes Orientales* (1686), the most authoritative account of the Maghreb in the period and the basis for Gibbon's discussions of North Africa.

Millar made numerous references to similarly credible eighteenth-century sources covering disparate parts of the world: Peter Kolb's descriptions of southern Africa, the botanist Johann Georg Gmelin's account of his scientific expedition to Siberia, and the widely read works of Charlevoix and Lafitau on America. Not all of Millar's sources were so legitimate. Millar used the plagiarized edition of De Brosse's *Histoire des navigations aux Terres Australes* (1756) (consulted by Bougainville and Cook on their voyages to the South Seas) that was translated and published by John Callendar under his own name in Edinburgh (1766–68). Millar also accepted such unauthorized or slimly authorized sources as the journalist John Hawkesworth's compendium from the journals of various expeditions, including Cook's first voyage (1773).

2. Like Smith, Millar drew on ancient ethnographies—above all, Tacitus's *Germania* and Caesar's *De Bello Gallico*—and Roman legal works. In good eighteenth-century fashion he illustrated his arguments with passages from classical literature to strengthen his point and show off his erudition. Millar also used the Hebrew bible as an ethnographic source for the early history of nomadic and pastoral law in a strikingly detached and “scientific” manner. He cast the comparative net even wider with *Ossian*, James Macpherson's series of poems putatively translated from early Gaelic sources (but in fact only inspired by them). Millar seemed much less skeptical than Hume about the authenticity of *Ossian*.<sup>18</sup>

18. David Hume, “Letter 176,” in J. Y. T. Greig, *The Letters of David Hume* (Oxford: Clarendon Press, 1932), I:328–31. Hume's argument is in part stadal: barbarians of the

3. Millar drew on natural lawyers and legal historians—Heineccius, de Noodt, Bynkershoek—but more for their interpretation of Roman law than for their own substantial doctrines. He did not cite the natural lawyers commonly discussed in jurisprudence or moral philosophy: Pufendorf, Barbeyrac, and so on.

4. Millar cited many French authors—Montaigne, Mably, Fontenelle, and Du Bos among them—but, with the exception of Montaigne, for their history, not their philosophy. Throughout the *Ranks* he also made erudite use of French histories of medieval chivalry. Like many Enlightenment thinkers, he was clearly as comfortable with French as with British sources.

In the first and second editions Millar cited his illustrious Scottish contemporaries—Hume, Robertson, and Smith—but it is notable that the reference to Robertson and those to Hume's *History* were eliminated from the third edition. This suggests that Millar had become more confident in his own interpretation of historical sources through teaching the historical sections of his "Government" course. Millar may also have developed a sense of himself as (along with Smith) belonging to the next generation of more rigorous "Scientific Whig" students of man. In keeping with the moresober tone of the preface to the third edition, a reference to Montesquieu's *Considerations sur les causes de la grandeur des Romains* was deleted.

One further striking change that concerns Hume lies behind the reference "See Dr. Wallace, on the numbers of mankind" (note, <267>). The note in the first and second editions read "See Essay on the populousness of ancient nations, by Mr. Hume." Hume and Wallace were involved in an amicable controversy concerning whether the ancient world was more or less populous than the modern world. Millar seems to have changed sides on this point by the time the third edition was published. This does not diminish Millar's lifelong admiration of Hume and advocacy of the "true old Humean philosophy";<sup>19</sup> in fact, it reflects a Humean belief in changing standards of empirical adequacy of research.

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type Macpherson described would be incapable of this sort of poetry. In the letter Hume also implied that Smith accepted the authenticity of the first volumes of the Ossianic poems (which were, in fact, the most authentic).

19. "Millar to David Douglas 10 August 1790," in Millar, *Letters and Occasional Writings*, ed. Cairns and Garrett (Indianapolis, Ind.: Liberty Fund, forthcoming).

## A NOTE ON THE TEXT

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This edition reproduces the fourth edition of Millar's *Ranks*. A discussion of changes in the various editions can be found in appendix 1. Although the fourth edition was posthumous, it is in fact identical to the third edition, the final lifetime edition, except for the addition of Craig's Preface.

Millar documented his arguments in the *Ranks* and provided many footnotes, whose contents range from accurate titles and page numbers to far more elusive references. I have tried to fill in the references wherever possible and provide notes wherever necessary. I have for the most part erred on the side of parsimony, adding notes to Millar's text only when required for the ease of the reader. My additions to Millar's notes are enclosed in a double set of square brackets.

The text has been corrected only when there are clear typographical errors or spelling mistakes, and all such errors have been corrected without comment. Page breaks in the fourth edition are indicated here by the use of angle brackets. For example, page 112 begins after <112>. In addition, the errata from the third edition have been incorporated and flagged with footnotes.

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BY JOHN MILLAR, ESQ.

PROFESSOR OF LAW IN THE UNIVERSITY OF GLASGOW.

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THE FOURTH EDITION, CORRECTED.  
TO WHICH IS PREFIXED,  
*AN ACCOUNT OF THE LIFE AND WRITINGS  
OF THE AUTHOR,*

BY JOHN CRAIG, ESQ.

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